

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

RICHARD PIOTROWSKI,	:	C.A. No. 06-631
	:	
Plaintiff,	:	
	:	
v.	:	TRIAL BY JURY OF TWELVE
	:	DEMANDED
MAO M. IAN and SUI MAI,	:	
	:	
Defendants/Third-Party Plaintiffs,	:	
	:	
v.	:	
	:	
HANOVER INSURANCE COMPANY,	:	
	:	
Third-Party Defendant.	:	

DEFENDANTS/THIRD PARTY PLAINTIFFS' ANSWER
TO COMPLAINT WITH THIRD-PARTY COMPLAINT

1. Admitted.
2. Answering Defendants are without sufficient knowledge to affirm or deny the averments of this paragraph.
3. Admitted.
4. It is admitted only that a collision occurred between the vehicles.
5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied.

10. Denied.

11. Denied.

COUNT I
RICHARD PIOTROWSKI v. MAO M. IAN

12. Answering defendants incorporate herein by reference their responses to paragraphs 1 through

11.

13. Denied.

14. Denied.

COUNT II
RICHARD PIOTROWSKI V. SUI MAI

15. Answering defendants incorporate herein by reference their responses to paragraphs 1 through

14.

16. Denied.

17. Denied.

WHEREFORE, Answering Defendants demand judgment in their favor and dismissal of plaintiff's complaint with costs of this action assessed against the plaintiff.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEENSE

18. Service of process if incomplete and improper.

SECOND AFFIRMATIVE DEFENSE

19. The claims asserted by plaintiff were proximately caused by an intervening and/or superseding cause.

THIRD AFFIRMATIVE DEFENSE

20. The accident was unavoidable.

FOURTH AFFIRMATIVE DEFENSE

21. The accident was caused by a sudden emergency not of the answering defendants' making.

FIFTH AFFIRMATIVE DEFENSE

22. The complaint fails to join an indispensable party.

SIXTH AFFIRMATIVE DEFENSE

23. The injuries alleged preexisted the incident alleged in plaintiff's complaint or are otherwise not related to the alleged incident.

SEVENTH AFFIRMATIVE DEFENSE

24. Answering defendants deny any liability whatsoever. If found liable, however, the answering defendants contend that the accident and any resulting injuries were proximately caused by the negligence of the plaintiff in that he:

- a. failed to maintain a proper lookout;
- b. failed to maintain proper control of his vehicle;
- c. was otherwise negligent.

To the extent that the negligence of the plaintiff is greater than the negligence of the answering defendants, recovery is barred. Otherwise, any award in favor of the plaintiff must be reduced by his pro rata share of liability.

WHEREFORE, Answering Defendants demand judgment in their favor and dismissal of plaintiff's complaint with costs of this action assessed against the plaintiff.

THIRD-PARTY COMPLAINT

Defendant/Third Party Plaintiffs Ian M. Mao and Sui Mai, aver as follows:

1. Defendant Third Party Plaintiffs have been sued by Plaintiff Richard Piotrowski. A copy of the Original Complaint is attached hereto as Exhibit A.
2. Service can be made on Hanover Insurance Company through the Delaware Insurance Commissioner to 440 Lincoln Street, Worcester, MA 01653
3. Hanover Insurance Company contracted with Plaintiff Richard Piotrowski to provide automobile insurance to Plaintiff for motor vehicle coverage including, pursuant to the Pennsylvania Statutory Law, uninsured motorist coverage.
4. Defendant/Third Party Plaintiff, has denied liability to the Plaintiff for the matters alleged in the Plaintiff's Complaint, attached hereto as Exhibit A. However, Third Party Plaintiffs assert that if held responsible to the Plaintiff for any and sums whatsoever arising from the accident alleged in Exhibit A, then Third Party Plaintiff is entitled to indemnification and/or contribution from the Third Party Defendant.
5. Third Party Plaintiffs assert that they are entitled to indemnification and /or contribution from Hanover Insurance Company, as Hanover stands in the shoes of a phantom vehicle and its operator that was the proximate cause of the alleged accident and injuries in the Original Complaint.
6. Third Party Defendant, by and through Hanover Insurance Company, is entitled to indemnity and contribution for the negligence of the unknown phantom vehicle that pulled into the path of the Defendant/Third Party Plaintiff on US. Route 13 on or about November 4, 2004. The unknown phantom vehicle's operator was negligent in that he/she failed to keep control of the vehicle, failed to yield to oncoming traffic with the right of way, failed to remain stopped while entering a highway until it was safe to do so, and otherwise was careless and negligent in a manner proximately causing the accident alleged in the Original Complaint of the Plaintiff.

7. As a result of the negligence of the phantom vehicle's operator, Defendant/Third Party Plaintiff swerved to avoid the vehicle, and as a result contacted the vehicle of the Plaintiff. As a result, Third Party Plaintiff has been caused to appear and answer for the allegations contained in the Original Complaint.

WHEREFORE, to the extent the Defendants/Third Party Plaintiffs are found liable for any amount of damages to the Plaintiff, then Third Party Plaintiff is entitled to indemnity and/or contribution for any and all such amounts, plus costs and expenses associated and incurred as a result of defending this claim.

CHRISSINGER & BAUMBERGER

/s/David L. Baumberger

DAVID L. BAUMBERGER

Attorney I.D. No. 2420

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Wilmington, DE 19806

(302) 777-0100

DATED: December 11, 2006

Attorney for Defendants/Third-Party Plaintiffs

CERTIFICATE OF SERVICE

I, **DAVID L. BAUMBERGER, ESQUIRE**, hereby certify that on this 5th day of December, 2006, I have had served electronically a true and correct copy of the attached ***DEFENDANTS/THIRD PARTY PLAINTIFFS' ANSWER TO COMPLAINT AND THIRD-PARTY COMPLAINT*** to the following:

Nicholas J. Renzi, Esquire
Stampono D'Angelo Renzi DiPiero
500 Cottman Avenue
Cheltenham, PA 19012

CHRISSINGER & BAUMBERGER

/s/David L. Baumberger

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